UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

El Paso Natural Gas Company Docket No. RP04-492-000

ORDER ACCEPTING TARIFF SHEETS

(Issued September 22, 2004)

1. On August 23, 2004, El Paso Natural Gas Company (El Paso) filed revised tariff sheets[1] which change its General Terms and Conditions (GTC) and Pro Forma service agreements to allow El Paso to negotiate an evergreen provision and minimum and maximum pressure commitments. El Paso also included a provision which specifies the manner in which El Paso will offer a discount. Lastly, El Paso includes several minor housekeeping changes.

2. The tariff sheets are accepted effective September 23, 2004, as requested. Acceptance of these tariff sheets is in the public interest because it will provide greater flexibility to customers desiring minimum and maximum pressure commitments or evergreen provisions, as well as greater clarity regarding the manner in which discounts are offered. Additionally, acceptance of these tariff sheets will reduce the need to file agreements as material deviations from the form of service agreement.

Details of the Filing

3. El Paso states that it is proposing to update its tariff for commonly used contract provisions such as pressure commitments, discount descriptions, and evergreen clauses. In the past, El Paso states, these service requirements were added to the shipper's transportation service agreement (TSA) when requested by the shipper. While El Paso does not believe that these requirements rise to the level of material deviations, it states that it is proposing to identify these provisions in its tariff out of an abundance of caution, in order to minimize the need to file some TSAs for Commission review. El Paso states that the tariff provisions proposed here do not change or affect any existing TSA.

[1] See Appendix.

4. Specifically, El Paso is proposing to add an evergreen provision to the GTC and the Pro Formas to indicate that El Paso and a shipper may mutually agree to extend the contract term beyond the primary term through use of an evergreen clause. El Paso states that TSAs for interruptible transportation will typically have a short notification period, while TSAs for firm transportation will have a longer period, typically one year. El Paso states that it will agree to an evergreen clause with shippers on a not unduly discriminatory basis.

5. In addition, El Paso states, while Rate Schedules FT-1 and IT-1 permit El Paso to offer discounts to its shippers, the Pro Formas assume that all service is provided at maximum rates. Thus, El Paso is proposing to add a blank to its FT-1 Pro Forma where discount conditions may be described. El Paso states that it anticipates offering shippers the ability to request discounts and execute TSAs online in the future. Therefore, El Paso is proposing to revise its Pro Formas to reference the execution of a discount by electronic contracting. El Paso also states that its practice for IT-1 TSAs has been to execute a separate letter agreement when agreeing to a discount for service. El Paso proposes to offer this option to FT shippers, since short side letters can be executed more quickly than TSAs.

6. El Paso states that the discount provisions in the current FT and IT rate schedules are general in nature. El Paso is proposing to add a new section to the GTC, Discounted Rates, to indicate that it may agree to certain volume-related and index price-based discounts like those approved by the Commission in other proceedings.[2]

7. Pursuant to El Paso's proposal, volume-related discounts may be applied under the following conditions: (1) to specified quantities under the contract or related scheduled overrun transportation; (2) to specified quantities achieving or not exceeding a certain level; (3) in specified relationship to quantities actually transported; (4) to specified quantities during specified periods of time or during specified periods of the year; (5) to specified quantities at specific receipt or delivery points or other geographical locations or (6) that a specified discounted rate would apply only to production or reserves committed or dedicated to El Paso. Additionally, El Paso states, subject to certain conditions, it may agree with its shippers to a discounted rate that is calculated using formulas based on published index prices for specific receipt and/or delivery points or other mutually agreed to published price references.

[2] El Paso cites, *inter alia*, Transwestern Pipeline Co., 88 FERC ¶ 61,094 (1999) and Midwest Gas Transmission Co., 108 FERC ¶ 61,014 (2004). El Paso states that its proposed language is nearly identical to the provisions accepted by the Commission in the cited proceedings.

8. El Paso states that the Discounted Rates section specifies that any discounted rate must fall within a range established by the minimum and maximum rates of the applicable rate schedule. In addition, El Paso is proposing that it be permitted to enter into discount agreements that provide for prospective adjustments to rate components upward or downward to achieve an agreed upon overall rate so long as all rate components remain within the applicable maximum and minimum amounts.

9. El Paso states that although the exhibits to its current Pro Formas contain provisions for the establishment of pressure obligations, El Paso believes that it is appropriate to specify more clearly in its tariff how pressure obligations will be offered. Therefore, El Paso states that it has revised Sheet No. 249 to add a pressure commitment provision specifying that the pipeline and shipper may agree on maximum and minimum pressure obligations for service if the agreement has no adverse impact on existing service to other shippers. Further, El Paso states that it will post the agreed-upon maximum and minimum pressure obligations on its internet website no later than the first nomination made under that contract. In addition, it will provide a written explanation, upon request, of the operational basis for refusing any such request. El Paso states that its provisions regarding pressure commitments are similar to those approved by the Commission in other proceedings.[3]

10. Additionally, El Paso proposes several minor tariff housekeeping changes. For example, El Paso proposes removing its address from the Pro Forma service agreements and leaving this as a blank, to be filled in with the current address when the contract is executed.

Notice and Interventions

11. Public notice of the filing was issued on August 25, 2004, with interventions and protests due as provided in section 154.210 of the Commission's Regulations. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2004), timely filed motions to intervene and motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Several parties filed to intervene. Comments or protests were filed by the El Paso Municipal Customer Group (El Paso Municipals), Phelps Dodge Corporation (Phelps Dodge), El Paso Electric Company (El Paso Electric) and Salt River Project Agricultural Improvement and Power District (Salt River). El Paso filed a response to the protests. The issues raised by the parties are discussed below.

---

[3] El Paso cites Colorado Interstate Gas Company, 99 FERC ¶ 61,035 (2002); Williams Gas Pipeline Central, Inc., 97 FERC ¶ 61,004 (2001); and ANR Pipeline Co., 97 FERC ¶ 61,222 (2001).

Discussion

12. Phelps Dodge and Salt River have no objection to El Paso's proposal and Salt River states that it will clarify shippers' rights and reduce the number of non-conforming agreements. However, these parties, as well as El Paso Electric and the El Paso Municipals, are concerned about the impact of these changes on the current renegotiation of their full requirements (FR) contracts to contract demand (CD) contracts pursuant to the Commission's orders in Docket No. RP00-336, *et al*. (Capacity Allocation Proceeding).[4] Salt River states that, while El Paso asserts that the proposed changes will not affect "existing" contracts, the changes could apply to the revised TSAs for converted FR shippers. Phelps Dodge, El Paso Electric, and the El Paso Municipals also note that their TSAs are subject to the provisions of El Paso's Rate Schedule FT-1, or superceding rate schedules, which in turn incorporates by reference the provisions of the GTC. These parties ask the Commission to direct El Paso to modify its tariff language to clarify that these tariff changes do not apply to existing TSAs, including TSAs added as a result of the Commission's mandatory conversion of FR service to CD service in the Capacity Allocation Proceeding. Salt River asks the Commission to clarify that the approval of the proposed provisions will not restrict a converting customer's ability to negotiate terms and conditions of a revised TSA which may not be included in El Paso's Pro Forma agreement, but which are contained in the FR customer's existing TSAs and are unrelated to the provision of FR service.

13. El Paso filed a response to these concerns.[5] El Paso states that its filing does not affect existing service contracts because the provisions are optional and take away no existing rights. El Paso agrees with the request of Salt River that "the approval of the proposed provisions will not restrict a converting customer's ability to negotiate terms and conditions of a revised FT-1 TSA (including ancillary agreements) which may not be included in El Paso's pro forma, but which are contained in the FR customer's existing TSAs and are unrelated to the provision of FR service." However, El Paso states that the protestants' statements that tariff changes do not affect preexisting agreements or that

---

[4] In the Capacity Allocation Proceeding, the Commission directed that FR contracts on El Paso be converted to CD contracts, effective September 1, 2003. 99 FERC ¶ 61,244 (2002), *reh'g*, 104 FERC ¶ 61,045 (2003); *reh'g*, 106 FERC ¶ 61,233 (2004). In an order issued April 19, 2004 in Docket Nos. RP00-336-018 and RP00-336-025, 107 FERC ¶ 61,057 at P 12, encouraged the parties to "negotiate in good faith and to reach agreement on revised TSAs."

[5] Under the Commission's Rules of Practice, answers to protests are generally not allowed. 18 C.F.R. § 385.213(a)(2) (2004). However, the Commission may accept answers to protests when the answers assist in the decision-making process. The Commission is accepting El Paso's response to the extent that it clarifies its proposal, but will not address any other matters raised in the response.

modifications of the GTC do not apply to existing TSAs are overbroad and incorrect because El Paso's contracts contain "Memphis" clauses that allow for changes in the contracts to reflect approved tariff changes.

14. The Commission accepts El Paso's filing as clarified by El Paso that the proposed revisions will not restrict a converting customer's ability to negotiate terms and conditions of a revised FT-1 TSA which may not be included in El Paso's Pro Forma, but which are contained in the FR customer's existing TSAs and are unrelated to the provision of FR service. The language of the GTC provisions is permissive and allows El Paso to negotiate certain terms with shippers, but does not obligate any shipper to do so. Therefore, tariff provisions approved in this docket should not impact the renegotiation of the FR contracts.

15. El Paso Municipals further argue that the filing illustrates the tension in the Commission's policy on negotiated terms and conditions. El Paso Municipals cite the Commission's decision in *Tennessee Gas Pipeline Co.,*[6] where the Commission held that certain terms and conditions of service, such as minimum pressures, may be negotiated if the pipeline's tariff specifically states that the matters may be negotiated. In these circumstances, the negotiation of these specific matters is part of the pipeline's recourse service and is available to all shippers.

16. El Paso Municipals state that its members are small municipal distributors that do not have the market power to negotiate favorable terms comparable to a large generator. Further, El Paso Municipals assert that El Paso could create a basis for differentiating between customers, which would be to the disadvantage of the members of El Paso Municipals. El Paso Municipals are concerned that negotiation of such terms and conditions with more favored customers will result in the eventual reduction of recourse service quality. El Paso Municipals argue that the Commission should refuse to allow negotiated terms and conditions, but if they are allowed, the Commission should require them to be filed as material deviations, because that would lead to a more transparent situation.

17. El Paso's proposal is consistent with Commission policy, which is to allow parties to agree to certain terms and conditions as long as they are available to all shippers pursuant to a provision in the General Terms and Conditions.[7] The Commission has not allowed individually negotiated terms and conditions. El Paso is obligated by the Commission's regulations to provide non-discriminatory service. Moreover, in this case, El Paso specifically states that it will not accept any pressure commitments that would impair existing services. With regard to El Paso Municipals' concern for transparency, El Paso

[6] 98 FERC ¶ 61,250 at 62,008-009 (2002).

[7] *Id.*

has stated that it will promptly list pressure commitments on its website for all to see and will provide a written analysis of why any such commitment was refused. The Commission finds that El Paso's proposal includes adequate safeguards and is similar to other proposals accepted by the Commission.[8]

18. El Paso's proposed discount provisions are similar to those accepted in other cases and raise no special issues.[9] Using such discount provisions will reduce the need to file contracts as material deviations, thereby reducing the burden on the pipeline.

19. Regarding the housekeeping tariff changes, the Commission has determined that the changes are acceptable.

20. Phelps Dodge and El Paso Electric observe that the Commission's orders in the Capacity Allocation Proceeding are on appeal to the United States Court of Appeals for the District of Columbia Circuit.[10] They state that any order in this proceeding should be conditioned on the outcome of that appeal.

21. The Commission recognizes that the orders in the Capacity Allocation Proceeding are under judicial review. Commission action is always subject to the outcome of court review, and no provision to that effect is necessary in this order.

The Commission Orders:

The tariff sheets are accepted to be effective September 23, 2004.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

---

[8] *See, e.g.*, Colorado Interstate Gas Company, 99 FERC ¶ 61,035 (2002), Williams Gas Pipelines Central, Inc., 97 FERC ¶ 61,004 (2001) and ANR Pipeline Co., 97 FERC ¶ 61,222 (2001).

[9] *See, e.g.*, Transwestern Pipeline Company, 88 FERC ¶ 61,094 (1999) and Midwestern Gas Transmission Company, 108 FERC ¶ 61,014 (2004).

[10] Arizona Corporation Commission v. FERC, No. 03-1206 (D.C. Circuit).

Docket No. RP04-492-000 **APPENDIX**

Second Revised Volume No. 1A

Tariff Sheets to be Accepted:

3rd Revised Third Revised Sheet No. 200
Third Revised Sheet No. 249
Original Sheet No. 371
Original Sheet No. 372
Sheet Nos. 373-399
Fourth Revised Sheet No. 402
Third Revised Sheet No. 404
Third Revised Sheet No. 405
Third Revised Sheet No. 417
Original Sheet No. 417A
Second Revised Sheet No. 418
Second Revised Sheet No. 420
Third Revised Sheet No. 423
Second Revised Sheet No. 424